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OCT 10 2001

In re Application of	:	OFFICE OF PETITIONS
Raymond S. Wach	:	
Application No. 09/859,716	:	DECISION REFUSING STATUS
Filed: May 17, 2001	:	UNDER 37 C.F.R. §1.47(a)
Attorney Docket No. EMPIR-022AUS	:	
Title: METHOD OF PERFORMING	:	
DISTRIBUTED LOAD TESTING	:	

This is in response to the petition under 37 CFR §1.47(b)¹, filed September 17, 2001.

The fee for filing a petition when an inventor refuses to sign or cannot be reached under 37 C.F.R. § 1.47(b) is set forth in 37 C.F.R. §1.17(h) as being one hundred and thirty dollars (\$130.00). Additionally, the fee associated with the late filing of an oath or declaration is set forth in 37 C.F.R. §1.17(e) as being sixty-five dollars (\$65.00). Petitioner has made no mention of the submission of either of these fees in his petition, and there is no record of said fees actually having been received. Therefore, in the absence of either an actual payment or an authorization to charge his deposit account for this fee, requirements (1) and (2) above have not been met.

¹ A grantable petition under 37 CFR §1.47(b) requires:

- (1) The petition fee;
- (2) a surcharge if the petition was not filed at the time of filing of the application;
- (3) a statement of the last known address of each of the non-signing inventors;
- (4) proof that a copy of the application was sent or given to each of the non-signing inventors for review;
- (5) proof that each of the non-signing inventors refused to sign;
- (6) proof that the Rule 47(b) applicant has sufficient proprietary interest in the subject matter to justify the filing of the application;
- (7) proof of irreparable damage, and;
- (8) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116 and 37 CFR 1.63.

The payment of these required petition fees is a prerequisite to the filing of a petition to revive under 37 C.F.R. § 1.47(b). Therefore, consideration of the merits of the petition before receipt of said fees would be premature.

In view of the foregoing, this petition is **DISMISSED**.

Your response to this letter *must* be submitted within ONE (1) MONTH from the mail date of this decision. Extensions of time under 37 C.F.R. § 1.136(a) are permitted. The response should include a cover letter entitled "Renewed Petition under 37 C.F.R. § 1.47(b)."

Once this opportunity has passed, *there will be no further reconsideration of this matter.*


Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, DC 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
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Telephone inquiries should be directed to Paul Shanowski, Petitions Attorney, at (703) 305-0011.



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